

ACO or CPO will prepare a memorandum of opinion in the format prescribed at DA Pam 27-162, when a claim is forwarded to USARCS for action. This requirement can be waived by the USARCS AAO.

(c) *Claim brought by a claims authority or superior.* A claim filed by an approval or settlement authority or his or her superior officer in the chain of command or a family member of either will be investigated and forwarded for final action, without recommendation, to the next higher settlement authority (in an overseas area, this includes a command claims service) or to USARCS.

NOTE TO § 536.62: For further discussion see DA Pam 27-162, paragraph 2-72.

§ 536.63 Settlement agreements.

(a) *When required.* (1) A claimant's acceptance of an award constitutes full and final settlement and release of any and all claims against the United States and its employees, except as to payments made under §§ 536.60 and 536.61. A settlement agreement is required prior to payment on all tort claims, whether the claim is paid in full or in part.

(2) DA Form 1666 (Claims Settlement Agreement) may be used for payment of COE claims of \$2,500 or less or all Army Central Insurance Fund and Army and Air Force Exchange Service claims.

(3) DA Form 7500 (Tort Claim Payment Report) will be used for all payments from the Defense Finance and Accounting Service (DFAS), for example, FTCA claims of \$2,500 or less, FCA and MCA claims of \$100,000 or less and all maritime claims regardless of amount.

(4) Financial Management Service (FMS) Forms 194, 196 and 197 will be used for all payments from the Judgment Fund, for example, FTCA claims exceeding \$2,500, MCA and FCA claims exceeding \$100,000.

(5) An alternative settlement agreement will be used when the claimant is represented by an attorney, or when any of the above settlement agreement forms are legally insufficient (such as when multiple interests are present, a hold harmless agreement is reached, or there is a structured settlement). For

further discussion, see DA Pam 27-162, paragraph 2-73c.

(b) *Unconditional settlement.* The settlement agreement must be unconditional. The settlement agreement represents a meeting of the minds. Any changes to the agreement must be agreed upon by all parties. The return of a proffered settlement agreement with changes written thereon or on an accompanying document represents, in effect, a counteroffer and must be resolved. Even if the claimant signs the agreement and objects to its terms, either in writing or verbally, the settlement is defective and the objection must be resolved. Otherwise a final offer should be made.

(c) *Court approval*—(1) *When required.* Court approval is required in a wrongful death claim, or where the claimant is a minor or incompetent. The claimant is responsible to obtain court approval in a jurisdiction that is locus of the act or omission giving rise to the claim or in which the claimant resides. The court must be a state or local court, including a probate court. If the claimant can show that court approval is not required under the law of the jurisdiction where the incident occurred or where the claimant resides, the citation of the statute will be provided and accompany the payment documents.

(2) *Attorney representation.* If the claimant is a minor or incompetent, the claimant must be represented by a lawyer. If not already represented, the claimant should be informed that the requirement is mandatory unless state or local law expressly authorizes the parents or a person in loco parentis to settle the claim.

(3) *Costs.* The cost of obtaining court approval will be factored into the amount of the settlement; however, the amount of the costs and other costs will not be written into the settlement, only the 20% limitation on attorney fees will be included.

(4) *Claims involving an estate or personal representative of an estate.* On claims presented on behalf of a decedent's estate, the law of the state having jurisdiction should be reviewed to determine who may bring a claim on

Department of the Army, DoD

§ 536.63

behalf of the estate, if court appointment of an estate representative is required, and if court approval of the settlement is required.

(d) *Signature requirements.* (1) Except as noted in paragraphs (d)(2) through (d)(6) of this section, all settlement agreements will be signed individually by each claimant. A limited power of attorney signed by the claimant specifically stating the amount being accepted and authorizing an attorney at law or in fact to sign is acceptable when the claimant is unavailable to sign. The signatures of the administrator or executor of the estate, appointed by a court of competent jurisdiction or authorized by local law, are required. The signatures of all adult beneficiaries, acknowledging the settlement, should be obtained unless permission is given by Commander USARCS. Court approval must be obtained where required by state law. If not required by state law, the citation of the state statute will accompany the payment document. Additionally, all adult heirs will sign as acknowledging the settlement. In lieu thereof, where the adult heirs are not available, the estate representative will acknowledge that all heirs have been informed of the settlement.

(2) Generally, only a court-appointed guardian of a minor's estate, or a person performing a similar function under court supervision, may execute a binding settlement agreement on a minor's claim. In the United States, the law of the state where the minor resides or is domiciled will determine the age of majority and the nature and type of court approval that is needed, if any. The age of majority is determined by the age at the time of settlement, not the date of filing.

(3) For claims arising in foreign countries where the amount agreed upon does not exceed \$2,500, the requirement to obtain a guardian may be eliminated. For settlements over \$2,500, whether or not the claim arose in the United States, refer to applicable local law, including the law of the foreign country where the minor resides.

(4) In claims where the claimant is an incompetent, and for whom a guardian has been appointed by a court of competent jurisdiction, the signature of

the guardian must be obtained. In cases in which competence of the claimant appears doubtful, a written statement by the plaintiff's attorney and a member of the immediate family should be obtained.

(5) Settlement agreements involving subrogated claims must be executed by a person authorized by the corporation or company to act in its behalf and accompanied by a document signed by a person authorized by the corporation or company to delegate execution authority.

(6) If it is believed that the foregoing requirements are materially impeding settlement of the claim, bring the matter to the attention of the Commander USARCS for appropriate resolution.

(e) *Attorneys' fees and costs.* (1) Attorneys' fees for all subparts in this part 536 fall under the American Rule and are payable only out of the up front cash in any settlement. Attorneys' fees will be stated separately in the settlement agreement as a sum not to exceed 20% of the award.

(2) Costs are a matter to be determined solely between the attorney and the claimant and will not be set forth or otherwise enumerated in the settlement agreement.

(f) *Claims involving workers' compensation carriers.* The settlement of a claim involving a claimant who has elected to receive workers' compensation benefits under local law may require the consent of the workers' compensation insurance carrier, and in certain jurisdictions, the state agency that has authority over workers' compensation awards. Accordingly, claims approval and settlement authorities should be aware of local requirements.

(g) *Claims involving multiple interests.* Where two or more parties have an interest in the claim, obtain signatures on the settlement agreement from all parties. Examples are where both the subrogee and subrogor file a single claim for property damage, where both landlord and tenant file a claim for damage to real property, or when a POV is leased, both the lessor or lessee.

(h) *Claims involving structured settlements.* All settlement agreements involving structured settlements will be prepared by the Tort Claims Division,

USARCS, and approved by the Chief or Deputy Chief, Tort Claims Division.

§ 536.64 Final offers.

(a) When claims personnel believe that a claim should be compromised, and after every reasonable effort has been made to settle at less than the amount claimed, a settlement authority will make a written final offer within his or her monetary jurisdiction or forward the claim to the authority having sufficient monetary jurisdiction, recommending a final offer under the applicable statute. The final offer notice will contain sufficient detail to outline each element of damages as well as discuss contributory negligence, the SOL or other reasons justifying a compromise offer. The offer letter should include language indicating that if the offer is not accepted within a named time period, for example, 30 or 60 days the offer is withdrawn and the claim is denied.

(b) A final offer under subpart D of this part will notify the claimant of the right to sue, not later than six months from the notice's date of mailing, and of the right to request reconsideration. The procedures for processing a request for reconsideration are set forth in § 536.89.

(c) Under subparts C or F of this part, the notice will contain an appeal paragraph. A similar procedure will be followed in subparts E and H of this part. Subpart J of this part sets forth its own procedures for FCA final offers. The procedures for processing an appeal are set forth in § 536.79 of this part. The letter must inform claimants of the following:

(1) They must accept the offer within 60 days or appeal. The appeal should state a counteroffer.

(2) The identity of the official who will act on the appeal, and the requirement that the appeal will be addressed to the settlement authority who last acted on the claim.

(3) No form is prescribed for the appeal, but the notice of appeal must fully set forth the grounds for appeal or state that it is based on the record as it exists at the time of denial or final offer.

(4) The appeal must be postmarked not later than 60 days after the date of

mailing of the final notice of action. If the last day of the appeal period falls on a Saturday, Sunday, or legal holiday, as specified in Rule 6a of the Federal Rules of Civil Procedure, the following day will be considered the final day of the appeal period.

(d) Where a claim for the same injury falls under both subparts C and D of this part (the MCA and the FTCA), and the denial or final offer applies equally to each such claim, the letter of notification must advise the claimant that any suit brought on any portion of the claim filed under the FTCA must be brought not later than six months from the date of mailing of the notice of final offer and any appeal under subpart C of this part must be made as stated in paragraph (c) of this section. Further, the claimant must be advised that if suit is brought, action on any appeal under subpart C of this part will be held in abeyance pending final determination of such suit.

(e) Upon request, the settlement authority may extend the six-month reconsideration or 60-day appeal period provided good cause is shown. The claimant will be notified as to whether the request is granted under the FTCA and that the request precludes the filing of suit under the FTCA for 6 months. Only one reconsideration is authorized. Accordingly, that claimant should be informed of the need to make all submissions timely.

NOTE TO § 536.64: For further discussion see DA Pam 27–162, paragraph 2–74.

§ 536.65 Denial notice.

(a) Where there is no reasonable basis for compromise, a settlement authority will deny a claim within his or her monetary jurisdiction or forward the claim recommending denial to the settlement authority that has jurisdiction. The denial notice will contain instructions on the right to sue or request reconsideration. The notice will state the basis for denial. No admission of liability will be made. A notice to an unrepresented claimant should detail the basis for denial in lay language sufficient to permit an informed decision as to whether to request appeal or reconsideration. In the interest of deterring reconsideration, appeal or suit, a denial notice may be releasable under